To: United States Department of State

Re: Comments to regulations implementing the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA).

Docket Number: State/AR-01/96

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These comments are designed to assist the Department of State in creating final regulations which will more effectively implement the fundamental purposes of the Convention and the IAA. These comments reflect my experiences as an adoptive parent of children from Andhra Pradesh, India, a State within India that has been mired in intercountry adoption scandals for many years. These comments also reflect my expertise as a law professor, who has taught and/or written in a number of relevant areas, including international children's issues, international human rights law, family law, juvenile law, constitutional law, and criminal law. While the views stated are my own, these comments reflect the experience that comes with interacting with a wide variety of persons involved in intercountry adoption, including adoptive parents, adoptees, agency personnel, and professionals involved in assessing and educating children. Unfortunately, I have no direct experience with birth families, although I have reviewed interviews and studies related to their situations.

These comments do not represent the views of my employer, Samford University, nor any other organization with which I may be affiliated.

In order to more fully assist the Department, these comments will contain specific suggestions for deletions, additions, and alterations to the proposed rule, including suggesting the use of specific language.

In order to set the premises for these very specific suggestions, these comments will begin with a brief overview of the purposes of the Convention and the IAA

I. FUNDAMENTAL PURPOSES OF THE CONVENTION AND THE IAA

Some of the fundamental purposes of the Convention and IAA, as interpreted within the context of international and national law, can be summarized as follows:

(1) Facilitating intercountry adoption as a positive option for providing families for orphans, to be employed only when efforts to maintain the child within the birth family are either unsuccessful or contrary to the best interests of the child, and where in-country adoptive placement is not possible.

(2) To prevent "the abduction, the sale of, or traffic in children." *See* Convention Art. I(b).

(3) To "protect the rights of, and prevent abuses against, children, birth families, and adoptive parents...." *See* IAA, section 2(b)(2).

(4) To ensure that intercountry adoptions are "in the children's best interests." *See* IAA, section 2(b)(2).

(5) In implementation of the above, to ensure a reliable system of inter-country adoption, where (1) birth families are assisted and encouraged, where possible, to keep their children; (2) no undue coercion or improper financial inducements for relinquishment are employed; (3) countries of origin make, systematically and in each individual case, appropriate efforts to secure in-country placements in preference to out of country placements; (4) there is financial transparency to avoid the illicit use of funds which might create improper incentives toward intercountry adoption; (5) child study forms and medical reports concerning children are accurate, reliable, and reasonably informative, to ensure that children are placed in families equipped to handle their needs, keeping in mind that not all families are capable of providing for every kind of special needs child, and that inappropriate placements can be seriously detrimental both for the child and the adoptive family; (6) home study reports are accurate, reliable, and reasonably complete, so that responsible individuals in the country of origin can accurately assess whether the placement of a particular child within a particular prospective adoptive family is in the best interests of the child.

II INTERCOUNTRY ADOPTION IS NOT A SELF-REGULATING, SELF-CORRECTING SYTEM

The Department has sufficient experience in intercountry adoption to recognize that the current system of intercountry adoption, operating prior to implementation of the Convention, is neither a self-regulating nor a self-correcting system. The Department's experiences with adoption scandals and difficulties, for example in Cambodia, Viet Nam, Guatemala, Romania, and India, illustrate these difficulties.

Reflection upon these experiences should indicate the reasons that the intercountry adoption system so often falls far short of the principles of international and national law outlined above. These reasons would include the following:

(1) The Large Disparities in Wealth, Culture and Distance between the United States and Sending Countries Invite Corruption

Intercountry adoption generally involves interaction between citizens of rich nations, such as the United States, and citizens of developing or transition economies. The large disparities in wealth between these societies, as well as differences between degrees of legal and financial transparency, invite corruption. The poor within countries of origin may be so financially desperate, and so culturally and legally powerless, as to be extremely vulnerable to improper inducements or pressures to relinquish their children. Wealthier persons within such societies may often be poor in raw dollar terms relative in U.S. standards, and thus tempted by relatively small amounts to facilitate illicit adoptions. Systems of governmental regulation or oversight within some sending countries may be unreliable, underfunded, or subject to corruption through bribery or personal connections.

(2) United States Agencies have Financial and Ideological Incentives to Bring Children to the United States, Regardless of Allegations of Abuse

United States agencies involved in intercountry adoption have strong financial and ideological incentives to keep cases flowing through the pipeline, regardless of credible allegations of abuses. Financially, agencies depend on successfully moving children from other countries to the United States. Ideologically, while agencies typically pay lip service to the Convention's preferences for maintaining the child in the country of origin, many well-meaning agency personnel are strongly committed to the goal of "saving children" through adoption. Thus, from the agency perspective the goal of correcting abuses, even where honestly accepted as a positive value, almost always gives way to the higher value, financially and ideologically, of keeping children moving through the system. United States adoption agencies therefore typically do not report their knowledge of irregularities and abuses to the authorities. Indeed, agencies have been known to employ a variety of means to prevent adoptive parents from sharing their own knowledge of improprieties. United States agency personnel are financially or ideologically motivated to "believe the best," doubt negative reports, minimize abuses, and keep the system open and running at all costs even when abuses become apparent.

(3) Adoptive Parents are Poorly Situated to Discover, Prevent, Investigate, or Report Abusive Adoption Practices

Adoptive parents are very poorly situated to police the system of intercountry adoption. Their primary motivation is to become the parent of a child. They rely for their information primarily on their US agencies, who tend to minimize irregularities and shield them from the actual workings of the system. Their contacts with the foreign country are often of short duration, and sometimes tightly scripted. Even when they become aware of irregularities, they easily become embroiled in efforts to "get their children out" regardless of those irregularities. Even if they want to share their knowledge of irregularities with others, they may be subject to threats of libel suits from their agency, ostracism by the adoption community which views them as a threat to the continued operation of the system, and contractual gag provisions. Even if they go so far as to sue their US agencies, they are likely to either settle the suits, and then become subject to gag agreements as a part of the settlement, or else lose the suit based on contractual disclaimers of responsibility for what occurs in foreign countries. Adoptive

parents are understandably fearful of approaching governmental authorities, due to possible negative affects on their adoptive children or family, or agency reprisals. (Agencies, it should be recalled, possess ample private and sensitive information on their clients, which may also make adoptive parents feel particularly vulnerable.) And in the rare events where adoptive parents have attempted to approach governmental authorities, they have often experienced a lack of interest in investigating and pursuing their cases. Thus, adoptive parents with significant knowledge of improprieties rarely share them in any way likely to produce change. Most governmental officials only experience the involvement of prospective adoptive parents when they seek governmental help in getting children out of countries of origin and into the United States.

III. THE EXPERIENCE OF THE UNITED STATES, AS THE LARGEST RECEIVING COUNTRY, INDICATES THAT IT WOULD BE IRRESPONSIBLE TO PRESUME THAT SENDING COUNTRIES WILL ALWAYS EFFECTIVELY PREVENT ABUSIVE ADOPTION PRACTICES

The United States government has accumulated extensive experience with adoption scandals in a variety of countries. The recurrent nature of these scandals indicates the apparent difficulties some sending countries have in preventing abusive adoptive practices. These difficulties go to the heart of the purposes of the Convention and the IAA, for they involve trafficking in children, improprieties in relationship to relinquishments, and profiteering in adoption. Adoptive parents within the United States have systematically experienced additional harms generally not brought to the attention of the government, including systematic failures to provide accurate child study and medical forms. Prospective adoptive parents within sending countries have experienced other harms also largely invisible to the United States government, including adoption systems which favor foreign placements and discourage in-country placements, contrary to international and local law.

If the United States, as the largest receiving nation, were to implement the Convention in a manner that systematically immunizes abusive practices within sending nations from effective review, the Convention itself would become a useless document that blinks at child trafficking. It would be irresponsible for the United States, as the largest receiving nation, to fail to construct a system that guards carefully against abusive practices both within the United States and also within sending nations.

IV. THE PROPOSED REGULATIONS EFFECTIVELY IMMUNIZE ABUSIVE ADOPTION PRACTICES WITHIN CONVENTION SENDING COUNTRIES FROM EFFECTIVE REVIEW, THEREBY UNDERMINING THE FUNDAMENTAL PURPOSES OF THE CONVENTION AND THE IAA

A. The Proposed Regulations Virtually Immunize Agencies and Persons Accredited or Approved by Convention Countries from Oversight or Review, Thereby Immunizing Child Trafficking, Coerced Relinquishments, and Falsified Child Study Forms from Regulation

The preamble to the proposed regulations clearly state the responsibilities of sending countries under the Convention:

The sending country must determine in advance that the child is eligible to be adopted, that it is in the child's best interests to be adopted internationally, that the consent of birth parents ... have been obtained freely and in writing, and that the consent of the child, if required, has been obtained. The sending country must also prepare a child background study that includes the medical history of the child as well as other background information.
Vol. 68 Federal Register pg. 54066.

The proposed regulations pertain to adoptions between Convention countries. Sending Convention countries will have their own Central Authority, which presumably will be involved in accrediting or approving agencies involved in intercountry adoption. Thus, in adoptions subject to these regulations, the critical tasks of sending country usually will either be accomplished directly by the sending government, or else by private entities accredited or approved by the government of the sending nation.

The proposed regulations provide that US agencies are not responsible for the acts of private entities that are accredited or approved by other Convention countries. Similarly, US agencies are not responsible for the acts of public authorities of other Convention countries. Thus, the preamble states directly: "these regulations do not make the primary provider responsible for the acts of these entities for the purposes of accreditation or approval or legal responsibility to the client." Vol. 68 Federal Register at pg. 54083. The proposed regulations specifically state that the "primary provider is not required to provide supervision or assume responsibility for ...Competent authorities and public authorities of other Convention countries, and entities accredited by other Convention countries." See section 96.14(d). Nowhere do the proposed regulations state even a duty of care, by which US agencies are responsible to exercise due diligence in their selection of partner agencies in other countries.

The proposed regulations do contain significant obligations by primary providers when they use "supervised providers in other Convention countries." See section 96.46. However, one can foresee that these provisions would be ineffective. Since other Convention countries will be fulfilling their Convention obligations generally either through public entities or through private accredited or approved entities, and since such entities are not "supervised" providers under the proposed regulations, then there generally would be no occasions in which a US agency was partnered with a "supervised provider" in another Convention country for purposes of providing adoption services.. Even if a US agency had the opportunity to partner with a non-accredited private "supervised" provider in another Convention country for subsidiary roles not requiring accreditation, the regulations themselves would dissuade such use, for the agency could avoid significant liability by partnering only with public authorities or entities accredited or approved by the other Convention nation.

The proposed regulation concerning "supervised" providers in other Convention countries should remain in the final rule, as a disincentive to continuing the prior US agency practice of contracting with private non-accredited "facilitators" in sending

countries and then disclaiming responsibility for the acts of such facilitators. It should be recognized, however, that the implementation of the Convention in sending countries and the United States will already largely restrict the role of such non-accredited facilitators, as they should not be able to provide any adoption services without becoming accredited by the Central Authority within the sending country. Non-accredited entities or individuals, whether facilitators or attorneys, would be restricted to subsidiary roles. While it will be useful to provide for US agency responsibility for facilitators playing such subsidiary roles, it is clearly not sufficient to fulfill the purposes of the Convention and the Act..

Unfortunately, experience in various sending countries indicates that individuals or entities of dubious ethics may be able to receive "accreditation" by the central authorities of some sending countries. For example, since 1990 the Central Adoption Resource Agency (CARA) of India has accredited all entities with significant roles in intercountry adoption, yet some notorious individuals/entities credibly accused of wrongdoing have been able to obtain, renew, or regain accreditation. Hence, if the new regulations provide that US agencies have no responsibility for their partner "accredited" entities in sending countries, one can anticipate that some of the most notoriously unethical "facilitators" and entities in sending countries will become accredited and play central roles in sending children to the United States for adoption.

Thus, where the US is the receiving nation, US agencies under the proposed regulations generally are neither directly, nor indirectly, responsible to see that children are not stolen, bought, or trafficked, that birth parents are not coerced or financially induced to relinquish, or that child study and medical forms are accurate. Put another way, US agencies or persons may be fully accredited or approved even if every single intercountry adoption they process from sending countries involves stolen, purchased, or trafficked children and grossly inaccurate child study and medical forms.

Further, the regulations at present provide no complaint or investigative process for handling allegations of such abusive practices. The proposed complaint process included in the proposed regulations requires adoptive parents to initially file complaints against their primary provider or supervised agencies/persons with such primary/supervised entities. However, if parents determine that their adoptive child may have been bought, stolen, trafficked, or improperly relinquished, or that the child study/medical forms are grossly inaccurately, such apparently does not constitute a complaint against any US agency/person, since the US agency/person lacks, under the regulations, any responsibility for these functions, as well as lacking any responsibility for how those functions were performed by public, approved or accredited entities in foreign countries. Indeed, since the regulations do not state a duty of due care in selection of public or accredited partner foreign entities, there would be no grounds for complaint under the regulations even if the US agency knowingly or negligently worked with public or accredited foreign entities involved in abusive adoption practices.

Similarly, since these abusive practices are not the responsibility of accredited or approved US agencies or persons, then presumably it would not be the responsibility of an accrediting entity to investigate them.

Unfortunately, the regulations perfectly fit the current approach of US agencies, which is to disclaim responsibility for the acts of their partner agencies in foreign countries. US agencies would be free, under the regulations, to continue their practices

(2) To exercise due diligence in determining whether to use, or continue to use, foreign governmental partner providers, and to refuse to use (or continue to use) such entities where the risks of violations of the Convention's principles are unreasonably high;

(3) To inform prospective adoptive parents in writing of developments in their adoption process triggering a duty to report under section (a)(1) above.

(4) To provide to prospective adoptive parents, in writing, an assessment of the likely accuracy, reliability, and thoroughness of child study and medical reports prepared or supervised by the foreign governmental partner providers who would be involved in preparing such reports in their adoption; such assessment should include any specific information concerning the foreign governmental partner provider and history of the adoption system within the sending country that is relevant to the likely accuracy, reliability, and thoroughness of such reports, rather than including only standardized language listing flaws possible to all such reports.

(5) To provide to prospective adoptive parents, in writing, an assessment of the risks of using the foreign governmental partner provider relevant to their prospective adoption, including risks pertaining to violations of the fundamental principles of the Convention noted in section (a)(1) above; such assessment should include any specific information concerning the foreign governmental partner provider and history of the adoption system within the sending country that is relevant to the assessment of these risks, rather than including only standardized language enumerating risks common to all intercountry adoptions.

(b) The agency or person, when acting as the primary provider and using foreign governmental partner providers to provide adoption services in other Convention countries, does the following in relation to risk management:

(1) Assumes tort, contract, and other civil liability to the prospective adoptive parent(s) for the primary provider's failure to fulfill the reporting, due diligence, refusal to use, and assessment requirements of this section; the fulfillment of duties relating to reporting and/or assessment is not a defense to a failure to fulfill duties relating to due diligence and a refusal to use.

(2) Maintains a bond, escrow account, or liability insurance in an amount sufficient to cover the risks of liability arising from its work with foreign supervised providers.

B. The regulations should provide for direct United States government investigations of irregularities within sending countries, and complaint mechanisms allowing direct complaints to the United States Government, Complaint Registry, and Accrediting Entities

As discussed in section (IV)(B) of these comments, effective implementation of the Convention and the IAA require that the United States Government directly conduct investigations where there is reasonable suspicion of abusive adoption practices occurring

within sending countries which could lead to the movement of children to the United States in violation of Convention standards.

In addition, it is necessary to remove those parts of the proposed regulations which provide that adoptive parents must initially file their complaints against agencies, prior to filing complaints with the US Government, Complaint Registry, or Accrediting Entities.

The stated purposes of the State Department's proposed regulations on complaints include: (1) reduction of litigation through provision of a complaint review process; and (2) creation of an appropriate system for responding to complaints within the framework of the IAA, under which "the Department for the most part would not directly regulate agencies or persons." Vol. 68 Federal Register at pg. 54086

The proposed regulations fail to take account of the interests at stake in intercountry adoption, and hence of the responsibilities of the United States Government under the Convention. The proposed regulations treat complaints review principally as a matter of private dispute resolution, as though the only interests at stake were those of US adoption agencies and prospective adoptive parents functioning as private contracting parties.. The Convention, however, is based on the understanding that intercountry adoption implicates fundamental public interests which cannot be bargained away by private parties. These fundamental public interests include the prohibitions of profiteering in adoption and trafficking in children, the protection of the integrity of birth families against coerced or induced relinquishment of children, the best interests of children, and the maintenance of children within their birth cultures and nations where such is compatible with their maintenance or placement within a family. Complaints about such matters cannot be made a matter of private dispute settlement between US agencies and adoptive parents, for this suggests that so long as these private parties can come to some settlement over such concerns, no action is necessary. The public interests at stake, as well as the private interests of those not represented in such negotiations (including birth parents, siblings, and extended families), demand that complaints and reports related to these matters be taken directly to regulatory authorities.

For example, due to the adoption scandals in Andhra Pradesh, India, prospective American parents have lost referrals or found themselves in limbo regarding a referral for several years. Similar problems have developed due to shut-downs, slow-downs, or scandals in a variety of nations. Where adoptive parents come to believe that the US agency was at fault in guiding them into these situations, and brought their complaint only to the agency, it might well be possible for the agency to "settle" such a complaint. The agency might refund money, provide a referral for no additional fee in another location, or otherwise satisfy the prospective adoptive family. Under the proposed regulations, such a private settlement might be the end of the matter, even though it provided no avenue for vindicating the fundamental public interests at stake. Merely refunding fees or providing another referral does not clarify whether the agency wrongfully partnered with individuals or entities in other countries involved in abusive adoption practices, such as buying babies, inducing or coercing relinquishments, or fabricating significant documents. Thus, the requirement of bringing complaints first to the agency could make it significantly less likely that the fundamental purposes of the Convention and IAA are effectively implemented.

Similarly, disputes between adoptive parents and agencies regarding fees might appear initially to only be private matters which should be subject to a private dispute settlement regimen. However, the question of appropriate fees has often proven to be closely connected to public concerns that money not provide improper inducements to relinquish or supply children, nor provide improper incentives favoring out-of-country over in-country placements. Thus, even matters that might appear to be merely private matters between parties can, in the intercountry adoption context, implicate the fundamental public purposes at stake.

Therefore, the following alterations in the proposed regulations should be made:

(1) **Add** new section clarifying that the United States Government has a non-delegable responsibility to investigation, in cases involving possible movement of children into the United States for purposes of adoption, the following acts:

(a) Acts within sending countries contrary to the fundamental purposes of the Convention and the IAA, including the Convention's purposes in preventing
(i) the abduction, sale of, or traffic in children,
(ii) involuntary, coerced or induced relinquishments, or
(iii) the intentional or negligent creation of misleading or seriously inaccurate child study/medical reports .

(b) Acts, either in the United States or other nations, which violate United States immigration laws;

(c) Acts, either in the United States or other nations, which violate binding international and/or national norms against trafficking in persons.

(2) **Amend** 96.69 to remove mandatory requirement that complaints against accredited agencies and approved persons first be filed with primary provider and agency/person providing adoption services, prior to being filed with either the Complaint Registry, accrediting entity, or the US Government. The complaint resolution system created in the proposed rule could be amended to provide a permissible, but not mandatory, system of dispute resolution.

VI. CONCLUSION

The proposed rule in its current form represents great effort to little purpose. The proposed rule attempts to regulate "on the cheap" by removing Department responsibility for most regulatory functions, and removing Department, accrediting entity, and US agency responsibility for ensuring that children brought to the United States for adoption have not been illegally taken from their birth family and nation. If the United States, as the largest receiving nation, takes this lax approach to implementation of the Convention, it will render the Convention and the Act as largely rhetorical and empty gestures.

The Department already is deeply familiar with the failure of the intercountry adoption system to be self-regulating, and with the interests and ideologies of the

participants which allow abusive practices to continue in cyclic patterns of scandal and abuse. There is a better way. The Department can fashion a rule which responsibly builds clear accountability into the system, and thus appreciably reduces abusive adoption practices. The United States can demand that the children brought here for adoption not be bought and trafficked like cattle. The United States Government can clearly reject US agency practices which wink at abusive adoptive practices by overseas partners. Only when the system of intercountry adoption is an accountable, dependable system, will it be a system safe for the children, birth families, and adoptive families impacted so profoundly by adoption.

of minimizing, ignoring, and failing to report abusive adoption practices by their partner foreign agencies, while representing themselves to the public as mainstream agencies deeply concerned with ethical adoption practices.

Thus, the regulations provide no mechanism for reporting the most serious kinds of abusive adoption practices, no method or plan for their investigation, and no provision for liability or responsibility.

This writer has personal experience that illustrates precisely how such a system of US agency irresponsibility functions. For example, when I complained to the Director of a well-established US placement agency about grossly inaccurate child study/medical forms, the Director told me that precisely because the forms stated an untruth, the US agency was not liable for misinforming the family concerning the condition of the child. Since the false statements were made in documents created under the supervision of the partner foreign agencies, the existence of the false statement in effect immunized the US agency, according to the US Director's reasoning. The US agency had, according to this reasoning, satisfied its obligations by presenting a document describing a child in a certain way, regardless of whether the document was in any way accurate. Similarly, when I repeatedly complained to a US agency concerning matters related to questionable relinquishments and falsification of papers, in the context of major adoption scandals garnering international attention, the answer was that the US agency had "done nothing wrong" and was not responsible for those actions taken by the foreign agencies/persons. This kind of attitude, then, is not limited at present to a few notorious crooks within the industry, but represents the well-considered perspective of mainstream agencies committed to doing adoptions without being responsible for the actions of their partner agencies in other countries.

B. The Complete Delegation of Investigative Functions to Private or State Accrediting Entities Would Prove Inadequate, Even if the Regulations were Amended to Make US Agencies/Persons Responsible for Critical Functions Performed Within Sending Countries

The IAA provisions providing for delegation of certain functions to one or more accrediting entities are workable to the extent that such entities are involved in reviewing basic standards related to the qualifications of personnel, insurance, corporate structure, budget, and other objective criteria capable of easy examination within the United States. It is unlikely, however, that any accrediting entity will appear that is capable of conducting serious investigations within sending countries related to matters such as child buying and stealing, trafficking, improper inducements or pressures for relinquishment, falsification of paperwork, inadequate efforts to place in-country, or inadequate or falsified child study/medical forms. Such investigations would require an extensive presence within sending countries, and would require language and cultural expertise relevant to all of the different sending countries. It could be diplomatically awkward for private regulatory entities exercising delegated U.S. governmental authority to investigate sensitive matters in foreign countries, particularly when such matters may sometimes involve alleged misconduct by foreign governmental officials. Thus, even if the regulations were amended to make US agencies/persons responsible for critical functions performed within sending countries, the regulations would be ineffective unless

the US government itself performed certain key investigative functions related to wrongdoing occurring within sending countries. The United States Governmental alone possesses the presence within sending nations, access to cultural and language expertise in all sending nations, and political sensitivity, to navigate these kinds of investigations. United States governmental responsibilities for immigration and diplomatic matters provide an existing framework for conducting such investigations, which could not be effectively delegated to a private or state-government accrediting entity.

While the language of the IAA delegates to accrediting entities certain oversight and complaint functions, it does not indicate those functions to be exclusive. Thus, the regulations could provide for accrediting entities to have responsibilities for oversight and complaint in certain areas appropriate to their capacities, while retaining for the US government investigative functions in other matters. Other provisions of law relating to immigration, and international obligations relating to norms against trafficking, already obligate the US government to investigate claims of irregularities prior to allowing children to be brought to the United States. Certainly the US government cannot hide behind the IAA to justify a governmental failure to investigate possible instances of persons being trafficked into the United States under the guise of adoption. Thus the regulations, in order to ensure an orderly and effective adoption system, and be consistent with US and international law, must provide that certain matters will be regularly investigated directly by the US government. Further, the regulations must create a complaint procedure and reporting requirements that bring these matters to the attention of the relevant authorities within the US government.

It is likely that the only or primary entities prepared to become accrediting entities would perform their work according to peer-review methodologies. Such peer-review methodologies would be adequate to ensure that certain of the objective standards pertaining to agencies and persons were met. However, peer review methodologies would not be adequate to address serious irregularities within sending countries, because the standards of the US agency on those matters are totally inadequate. Where the standards of the "peers" are systemically inadequate, they cannot be reliably improved by peer-review oversight or regulation.

Unfortunately, the standard of practice within United States placement agencies demands no investigative or reporting action in response to credible suspicion that children within the United States were involuntarily relinquished or trafficked. For example, I have had the personal experience of informing a US Agency Director, who has been quite active in a well-respected voluntary accreditation entity, that a certain child may very well have been involuntarily relinquished, and almost certainly arrived with falsified paperwork. This individual took no action, and did not believe that taking any action was necessary, even though her own US agency had served as the placement agency. There are in fact numerous adoptive parents within the United States who struggle with the possibility or even certainty that their adopted children were bought, stolen, or trafficked, and are offered no help whatsoever by their US agencies, who seem to consider that the parents should simply be grateful for receiving the children, whatever the circumstances. Thus, the typical attitude within the agencies appears to be that no remedial or investigative action is required in cases of suspected improper relinquishments, particularly once the child has been brought to the US. And of course in such cases when the child is still in the foreign country, the agencies typically work to

bring the child here, arguing that the best interest of the child and the prospective adoptive parents' interests trump any concerns about trafficking or illegalities. Allowing "peer-review" methods to govern investigations of fundamental abuses within sending countries would therefore amount to US government acquiescence in whatever abuses might occur in sending countries, including child trafficking and involuntary relinquishments.

V. THE REGULATIONS SHOULD BE ALTERED TO PROVIDE FOR US AGENCY RESPONSIBILITY FOR PARTNER FOREIGN AGENCIES, A DUTY OF DUE CARE FOR SELECTION OF APPROPRIATE FOREIGN PROGRAMS/PARTNERS, A DUTY TO REPORT REASONABLE SUSPICION OF SERIOUS IRREGULARITIES, DIRECT UNITED STATES GOVERNMENT INVESTIGATIONS OF IRREGULATIES WITHIN SENDING COUNTRIES, AND COMPLAINT MECHANISMS ALLOWING DIRECT COMPLAINTS TO THE US GOVERNMENT AND ACCREDITING ENTITIES

A. The Regulations Should Provide That the Primary Provider is Legally Responsible For Improper Actions by Partner Entities Operating in Other Convention Countries

The proposed regulations should be modified in the following ways to provide that the primary provider is legally responsible for certain improper actions by partner entities operating in other Convention countries:

(1) **Delete** section 96.14(d)(2), currently stating that the primary provider is not "required to provide supervision or assume responsibility for ...Competent authorities and public authorities of other Convention countries, and entities accredited by other Convention countries."

(2) **Add** new provisions, including the following:

(a) Additions to section 96.2, Definitions:

"foreign partner provider" means an agency, person, or other non-governmental entity, accredited or approved by another Convention country, providing one or more adoption services in a Convention case, which is working in cooperation with an accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the case.

"foreign governmental partner provider" means competent authorities or public authorities of other Convention countries, but excluding courts, providing one or more adoption services in a Convention case, which is working in cooperation with an accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the case.

(b) Additions: New section 96.14(g)

The primary provider must adhere to the standards contained in section [create new section number] when working cooperatively with foreign partner providers on Convention adoptions in other Convention countries.

(c) Additions: New section creating duties for primary providers working with foreign partner providers in other convention countries:

Using foreign partner providers in other Convention countries.

(a) The agency or person, when acting as the primary provider and using foreign partner providers to provide adoption services in other Convention countries, ensures that each such foreign partner provider:

(1) Does not engage in practices inconsistent with the Convention's principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of children;

(2) Does not have a pattern of licensing suspensions or other sanctions and has not lost the right to provide adoption services in any jurisdiction for reasons germane to the Convention.

(b) The agency or person, when acting as the primary provider and using foreign partner providers to provide adoption services in other Convention countries, ensures that each such foreign partner provider operates under a written agreement with the primary provider that:

(1) Clearly identifies the adoption service(s) to be provided by the foreign partner provider;

(2) Requires the foreign partner provider, if responsible for obtaining medical or social information on the child, to comply with the standards in section 96.49(d) through (j);

(3) Requires the foreign partner provider to prohibit child buying by any of its employees and agents; to have a written policy prohibiting its employees and agents from giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child, other than reasonable or required payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, or the provision of child welfare and child protection services generally; and to provide training to its employees and agents on this policy;

(4) Clearly states the compensation arrangement for the services to be provided and the fees and expenses to be charged by the foreign partner provider, as well as stating any requirements, expectations, or customary practices relating to foreign donations;

(5) Specifies whether the foreign partner provider's fees and expenses will be billed to and paid by the client(s) directly or billed to the client through the primary provider;

(6) Provides that, if billing the client(s) directly for its services, the foreign partner provider will give the client(s) an itemized bill of all fees and expenses to be paid, with a written explanation of how and when such fees and expenses will be refunded if the service is not completed, and will return any funds collected to which the client(s) may be entitled within thirty days of the completion of the delivery of services;

(7) Provides that the primary provider will retain legal responsibility for each case in which adoption services are provided, as required by paragraphs (c) & (d) of this section;

(8) Requires the foreign partner provider to respond within a reasonable period of time to any request for information from the primary provider, the Secretary, or the accrediting entity that issued the primary provider's accreditation or approval;

(9) Requires the foreign partner provider to provide the primary provider on a timely basis any data that is necessary to comply with the primary provider's reporting requirements;

(10) Permits suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the foreign partner provider is not in compliance with the agreement or the requirements of this section.

(c) The agency or person, when acting as the primary provider and using foreign partner providers to provide adoption services in other Convention countries, is responsible:

(1) To report directly to the Secretary and the Department of Homeland Security any specific instances in which there is a reasonable suspicion of violation of the Convention's principles prohibiting the sale, abduction, or trafficking of children, the inducement of consents to adoption by payment or compensation of any kind, the receipt of improper financial or other gain, or the receipt of remuneration unreasonably high in relation to services rendered;

(2) To exercise due diligence in determining whether to use, or continue to use, foreign partner providers, and to refuse to use (or continue to use) such entities where the risks of violations of the Convention's principles are unreasonably high;

(3) To inform prospective adoptive parents in writing of developments in their adoption process triggering a duty to report under section (c)(1) above.

(4) To provide to prospective adoptive parents, in writing, an assessment of the likely accuracy, reliability, and thoroughness of child study and medical reports prepared or supervised by the foreign partner providers who would be involved in preparing such reports in their adoption; such assesssment should include any specific information concerning the foreign partner provider and history of the adoption system within the sending country that is relevant to the likely accuracy, reliability, and thoroughness of

such reports, rather than including only standardized language listing flaws possible in all such reports.

(5) To provide to prospective adoptive parents, in writing, an assessment of the risks of using the foreign partner provider relevant to their prospective adoption, including risks pertaining to violations of the fundamental principles of the Convention noted in section (a)(1) above; such assessment should include any specific information concerning the foreign partner provider and history of the adoption system within the sending country that is relevant to the assessment of those risks, rather than including only standardized language enumerating risks common to all intercountry adoptions

(d) The agency or person, when acting as the primary provider and using foreign partner providers to provide adoption services in other Convention countries, does the following in relation to risk management:

(1) Assumes tort, contract, and other civil liability to the prospective adoptive parent(s) for (i) the foreign partner provider's provision of the contracted adoption services; (ii) for the primary provider's failure to fulfill the reporting, due diligence, refusal to use, and assessment requirements of section (c), and (iii) compliance by both the foreign partner provider and primary provider with the standards in this subpart F; and

(2) Maintains a bond, escrow account, or liability insurance in an amount sufficient to cover the risks of liability arising from its work with foreign partner providers;

(d) Addition: New section 96.14(h):

The primary provider must adhere to the standards contained in section [new section number] when working cooperatively with foreign governmental partner providers on Convention adoptions in other Convention countries.

(e) Addition: New section creating duties for primary providers working with foreign governmental partner providers in other convention countries:

Using foreign governmental partner providers in other Convention countries

(a) The agency or person, when acting as the primary provider and using foreign governmental partner providers to provide adoption services in other Convention countries, is responsible:

(1) To report directly to the Secretary and the Department of Homeland Security any specific instances in which there is a reasonable suspicion of violation of the Convention's principles prohibiting the sale, abduction, or trafficking of children, the inducement of consents to adoption by payment or compensation of any kind, the receipt of improper financial or other gain, the receipt of remuneration unreasonably high in relation to services rendered.